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STATEMENT OF THE CASE AND FACTS

Appellee accepts the Statement of the Case and Facts as presented by Appellant.

QUESTION PRESENTED

WHETHER THE DECISION OF THE DISTRICT COURT OF APPEAL, FIFTH DISTRICT, IN THE CASE SUB JUDICE IS IN DIRECT CONFLICT WITH THE DECISION IN GOLDEN V. STATE, 120 SO.2D 651 (FLA. 1ST DCA 1960), THEREBY INVOKING THE DISCRETIONARY REVIEW JURISDICTION OF THIS COURT PURSUANT TO ARTICLE V, SECTION 3(b)(3) OF THE CONSTITUTION OF FLORIDA AND FLORIDA RULE OF APPELLATE PROCEDURE 9.030(A)(IV)?

ARGUMENT

Pursuant to the 1980 amendment to Art. V, § 3(b)(3) of the Florida Constitution, this Court's discretionary conflicts jurisdiction is limited to those decisions of a district court of appeal which expressly and directly conflict with a decision of another district court of appeal or this Court on the same question of law. As this Court noted in Jenkins v. State, 385 So.2d 1356 (Fla. 1981):

The new article embodies throughout its terms the idea of a Supreme Court which functions as a supervisory body in the judicial system for the state, exercising appellate power in certain specified areas essential to the preservation of uniformity of principle and practice, with review by the district courts being in most instances final and absolute.

Id. at 1357, quoting from, Ansin v. Thurston, 101 So.2d 808, 810 (Fla. 1958).

As Petitioner notes, the District Court of Appeal, in its decision in the case sub judice, expressed direct conflict with Golden v. State, 120 So.2d 651 (Fla. 1st DCA 1960), to the

extent that Golden, supra, held that in order to violate § 790.19, Fla. Stat. (1983), it was necessary that the defendant intentionally shoot at the building per se, rather than at a human target located in the building. However, even assuming express and direct conflict does exist between the decision of the Fifth District Court of Appeal in the case sub judice and the decision of the First District Court of Appeal in Golden v. State, supra, Respondent nevertheless asserts that there is no compelling cause such as would justify exercising this Court's discretionary jurisdiction in this regard. Indeed, Petitioner has failed to detail to this Court the importance of the issue he seeks to raise before it. Respondent submits that in the absence of such a showing, resolution of the issue raised herein is a matter best left to the district courts of appeal. Indeed, in light of other recent, more enlightened decisions by the district court of appeal,¹ it seems unlikely that the exercise of this Court's jurisdiction is necessary.

Respondent respectfully submits that unless and until conflict becomes so evident as to jeopardize the uniformity of principle and practice state-wide, this Court should decline to exercise its discretionary jurisdiction in this cause.

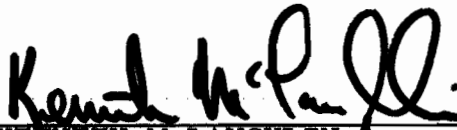
¹See, e.g., Ballard v. State, 447 So.2d 1040 (Fla. 2d DCA 1984)

CONCLUSION

WHEREFORE, based on the foregoing arguments and authorities, Respondent would pray this Court decline to exercise its discretionary jurisdiction in this cause.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing Respondent's Brief on Jurisdiction has been furnished, by delivery, to Lucinda H. Young, Assistant Public Defender for Appellant (1012 S. Ridgewood Ave., Daytona Beach, Florida 32014-6183), this 26th day of July, 1984.



KENNETH McLAUGHLIN
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